

**IN THE UNITED STATES
COURT OF APPEALS FOR VETERANS CLAIMS**

AARON N. ADAMS,
Appellant,

v.

DENIS MCDONOUGH,
Secretary of Veterans Affairs,
Appellee.

Docket No. 21-3239

Application for Attorney's Fees and Expenses

Under the EAJA, 28 U.S.C. § 2412(d), Mr. Adams applies for **\$26,450.73** in attorney's fees and expenses.

Procedural History

Mr. Adams timely appealed an April 12, 2021, Board Decision that denied an effective date prior to August 23, 2018, for Dependents' Educational Assistance (DEA), on May 11, 2021. Benjamin Binder, Raelyn Watson, and Harold Hoffman entered their appearances for Mr. Adams on May 11, 2021, December 13, 2021, and March 1, 2023, respectively. Mr. Adams filed his brief on February 24, 2022. The Secretary filed his brief on June 9, 2022. Mr. Adams replied on July 25, 2022. The parties filed a stipulated agreement and a joint motion to terminate the appeal on March 14, 2023. On March 30, 2023, the Court granted the motion. The Court issued its judgment and mandate the same day.

Prevailing Party

A party prevails when they obtain success "by virtue of having obtained an enforceable ... settlement giving some of the legal relief

sought.”¹ Mr. Adams prevailed because the Court granted the parties’ stipulated agreement assigning August 19, 2010, as the beginning date for Mr. Adams’ eligibility to DEA. On March 30, 2023, the Court granted the joint motion to terminate with the stipulated agreement, terminating the appeal of the April 2021 Board decision with prejudice. This Court-ordered relief triggered a “material alteration of the parties’ legal relationships necessary to permit an award of attorney’s fees.”²

The Government’s Position Was Not Substantially Justified

Courts grant EAJA fees under 28 U.S.C. § 2412(d) when the government’s position is not substantially justified. To be substantially justified, the government’s position must have a “reasonable basis both in law and fact.”³

The Court in this case granted the stipulated agreement, which agreed to assign Mr. Adams an August 19, 2010, beginning date for his eligibility for DEA benefits, with payment subject to courses or trainings approved for Chapter 35 benefits. The Secretary agreed to notify the BVA upon the Court’s final disposition of this settlement, requiring the VBA to take prompt action to implement the agreement.⁴

The government’s errors had no basis in fact or law and were not substantially justified. Further, there is no evidence of special circumstances in Mr. Adams’ case that would make an award of reasonable fees and expenses unjust.⁵

¹ *Buckhannon Bd. And Care Home v. West Virginia Dept. of Health and Human Resources*, 121 S. Ct. 1835, 1839 (2001) (quoting *S-1* and *S-2 v. State Bd. of Ed. of N.C.*, 21 F.3d 49, 51 (1994) (en banc))

² *Buckhannon*, 121 S. Ct. at 1840.

³ *Pierce v. Underwood*, 487 U.S. 552, 565 (1988).

⁴ Stipulated Agreement at 4.

⁵ 28 U.S.C. § 2412(d)(1)(A)

EAJA Fees Are Warranted

Mr. Adams's net worth did not exceed \$2,000,000 at the time he filed his Notice of Appeal with this Court—nor did he own an unincorporated business, partnership, corporation, association, unit of local government, or organization with a net worth exceeding \$7,000,000 and having greater than 500 employees.⁶ Mr. Adams's counsel is eligible to receive an award under 28 U.S.C. § 2412(d)(2)(B).

The claimed hourly rate is reasonable. Mr. Adams was forced to retain Counsel to appeal a BVA decision that failed to comply with the required procedure. No special circumstances—as defined by 28 U.S.C. § 2412(d)(1)(A)—exist in this case that would make an attorney's fee award unjust. This case was not a first impression involving a good faith argument or a new and more stringent requirement for adjudication.

I. VetLAG U.S. Based Counsel Rate

In determining the equitable regular hourly rate, U.S.-based counsel for Mr. Adams used the fixed starting rate under the EAJA—\$125.00—plus the cost of living calculated under the CPI-U for the following areas:

- 1) Tampa-St. Petersburg-Clearwater, FL—as published by the Bureau of Labor Statistics for February 2022⁷—the month in which Mr. Adams filed his brief in this appeal. The CPI-U was 131.600 as of March 29, 1996; for February 2022, it was

⁶ See *Bazalo v. Brown*, 9 Vet. App. 304, 309, 311 (1996).

⁷ February 2022 is considered the midpoint as that is when the Appellant's Brief was submitted. See *Elcyzn v. Brown*, 7 Vet. App. 170, 181 (1994) (“the Court will permit—and encourage—the selection of a single mid-point date, such as the date upon which an appellant's brief, motion, or petition is filed with the Court, as the base for calculating a cost of living increase.”) Since the local CPI-U in Tampa is done bi-monthly, the February CPI-U was created by taking the average of January and March.

264.821.⁸ It increased by ~101%. After applying this increase to the \$125.00 hourly rate provided by EAJA, the current hourly rate for Benjamin Binder is \$251.54.

- 2) New York-Newark-Jersey City, NY-NJ-PA—as published by the Bureau of Labor Statistics for February 2022—the month in which Mr. Adams filed his brief in this appeal. The CPI-U was 166.5 as of March 29, 1996; for February 2022, it was 301.151.⁹ It increased by ~81%. After applying this increase to the \$125.00 hourly rate provided by EAJA, the current hourly rate for Peter Ausily is \$226.09.
- 3) South Urban—as published by the Bureau of Labor Statistics for February 2022—the month in which Mr. Adams filed his brief in this appeal. The CPI-U was 152.4 as of March 29, 1996; for February 2022, it was 274.688.¹⁰ It increased by ~80%. After applying this increase to the \$125.00 hourly rate provided by EAJA, the current hourly rate for Raelyn Watson is \$225.30.

II. VetLAG Counsel Abroad Rate

Harold Hoffman lives in Madrid, Spain. Christina Zahara Noh lives in Stuttgart, Germany. Clare Malinowski lives in Okinawa, Japan. Spain, Germany, and Japan do not have BLS CPI-U data for the *Elcyszyn*¹¹ formula to calculate cost-of-living (COL) changes but each country does have their own CPI data. A COL change can and should be calculated into EAJA rates for counsel living abroad.

⁸https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS35DSA0,CUUSS35DSA0 (last accessed May 1, 2023).

⁹https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS12ASA0,CUUSS12ASA0 (last accessed May 1, 2023).

¹⁰https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUUR0300SA0,CUUS0300SA0 (last accessed May 1, 2023).

¹¹ *Elcyszyn v. Brown*, 7 Vet. App. 170, 179 (1994).

The Spanish Madrid CPI data should be used to calculate a COL increase for work performed in Spain. The Spanish method for computing the CPI is nearly identical to the BLS method. Spain’s National Statistics Institute—or Instituto Nacional de Estadística—calculates its CPI data month-to-month using the prices of 479 consumer items.¹² This is much like the method the United States Bureau of Labor Statistics uses—which compares the prices of 243 basic consumer items monthly.¹³ And because Madrid has regional CPI data that goes back to March 1996, COL changes in Madrid can be calculated using the *Elcyszyn* method. Plus, as the Madrid CPI data captures the actual COL changes counsel experience, it satisfies all of the reasons the Court determined local CPI data should be used in *Elcyszyn* and *Mannino*.

The German Stuttgart CPI data should likewise be used to calculate a COL increase for work performed in Germany. The German Statistical Agency—or Statistisches Bundesamt—compiles the prices of around 650 types of goods and services every month and utilizes the standard “basket of goods” methodology that most economists and economic agencies use.¹⁴ The prices for the items in the “basket” for each German region—representative of “all goods and services purchased by each household in Germany”—are collected monthly and compiled into an index using weighted values. Stuttgart also has a regional CPI with data that goes back to March 1996. So, COL changes in Stuttgart can also be calculated using the *Elcyszyn* method. The Stuttgart CPI data also satisfies all of the reasons that the Court determined local CPI data should be used in *Elcyszyn* and *Mannino*.

The Japanese CPI data should also be used to calculate a COL increase for work performed in Japan. The Statistics Bureau of Japan

¹²https://www.ine.es/dyngs/INEbase/en/operacion.htm?c=Estadistica_C&cid=1254736176802&menu=metodologia&idp=1254735976607 (last accessed January 14, 2022).

¹³ <https://www.bls.gov/pub/hom/cpi/calculation.htm> (last accessed July 14, 2022).

¹⁴ https://www.destatis.de/EN/Themes/Economy/Prices/Consumer-Price-Index/Methods/VPI_e.html

compiles the prices of around 582 types of goods and services every month that include the living expenditures of a household economy.¹⁵ The index items are “selected with consideration of the importance of each item relative to total living expenditure, the representativity of price movements and feasibility of price data collection, in order to represent the price movement of all goods and services purchased by households.” So, COL changes in Okinawa can also be calculated using the *Elcyszyn* method. The Japanese CPI data also satisfies all of the reasons that the Court determined local CPI data should be used in *Elcyszyn* and *Mannino*.

To calculate a COL increase for counsel living abroad, one should use the fixed starting rate under the EAJA—\$125.00—plus the cost of living calculated under the:

- 1) Madrid CPI from the Spanish National Institute of Statistics for February 2022—the month in which Mr. Adams filed his brief in this appeal. The CPI was indexed at 60.61¹⁶ as of March 29, 1996; the CPI for February 2022 was 104.033.¹⁷ It increased by ~72%. After applying this increase to the \$125.00 hourly rate provided by EAJA, the February 2022 rate for Harold Hoffman is \$214.55.
- 2) Baden-Wurttemberg CPI from the German Federal Statistical Office for February 2022—the month in which Mr. Adams filed his brief in this appeal. The CPI was indexed at 71.3¹⁸ as of March 29, 1996; the CPI for February 2022 was 105.50.¹⁹ It increased by ~48%. After applying this

¹⁵ <https://www.stat.go.jp/english/data/cpi/pdf/2020base1.pdf>.

¹⁶ Exhibit 2. To calculate the March 1996 CPI, you must divide the current CPI by the percentage change since March 1996. For example, to calculate the number that equaled 50 after a 10% increase, the formula is $50 / 1.10$.

¹⁷Exhibit 2.

¹⁸Exhibit 3.

¹⁹Exhibit 3.

increase to the \$125.00 hourly rate provided by EAJA, the current hourly rate for Christina Zahara Noh is \$184.96.

- 3) Japanese CPI from the Japanese General Counter for Government Statistics (e-Stat) for February 2022—the month in which Mr. Adams filed his brief in this appeal. The CPI was indexed at 93.9²⁰ as of March 29, 1996; the CPI for February 2022 was 100.9²¹. It increased by ~7.5%. After applying this increase to the \$125.00 hourly rate provided by EAJA, the current hourly rate for Clare Malinowski is \$134.32.

III. Paralegal Rates

The *Laffey* Matrix rate for paralegals working for attorneys in the USA for 2021-2022 is \$208.00.²² Courts have found the DC *Laffey* rates reasonable.²³ The DoJ's policy is to not oppose the *Laffey* rates: " . . . although the USAO will no longer issue an updated *Laffey* Matrix computed using the prior methodology, it will not oppose using the prior methodology (if properly applied) to calculate reasonable attorney's fees under applicable fee-shifting statutes for periods after May 2015, provided that methodology is used consistently to calculate the entire fee amount."²⁴ The hourly rate for ME, Parker Low and Farron Eckhoff is \$225.00.

Conclusion

Mr. Adams' attorneys worked together in reviewing strategy and arguments and editing each other's work to ensure a good work product. The time for conversations between Mr. Adams' attorneys is properly billed because both attorneys' efforts were distinct and required to

²⁰ Exhibit 4.

²¹ Exhibit 4.

²² <http://laffeymatrix.com/see.html>; *McDowell v. District of Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); *Salazar v. Dist. of Col.*, 123 F.Supp.2d 8 (D.D.C. 2000).

²³ *Smith v. District of Columbia*, 466 F. Supp. 2d 151, 156 (D.D.C. 2006).

²⁴ <https://www.justice.gov/usao-dc/file/796471/download>, fn 5.

generate a well-argued and well-written product. Attorneys in all practices should confer, and it is proper to bill for discussions involving strategy and argument. All attorneys should also have filings edited before submission. Improving another attorney's work product through conferring and editing is a billable event. No time is billed in this application for training or any other labor not specific to this appeal or unnecessary to producing the best product.

The total hours expended were 103.45:

- Benjamin Binder: 80.40 (Tampa at \$251.54)
- Peter Ausily: 7.20 (NYC at \$226.09)
- Harold Hoffman: 6.35 (Madrid at \$214.55)
- Clare Malinowski: 2.75 (Japan at \$134.32)
- Christina Zahara Noh: 1.00 (Germany at \$184.96)
- Raelyn Watson: 0.00 (South Urban at \$225.30)
- ME: 2.75 (Paralegal at \$208.00)
- Parker Low: 3.25 (Paralegal at \$208.00)
- Farron Eckhoff: 0.00 (Paralegal at \$208.00)

Expenses totaled \$1,434.33. The total amount of fees, costs, and expenses is **\$26,450.73**. I included an itemized statement broken down into detailed case tasks intertwined to preparing the entire case.²⁵

Mr. Adams requests that the Court award **\$26,450.73** in attorney's fees and expenses.

May 1, 2023.

Submitted,

/s/ Benjamin R. Binder
BENJAMIN R. BINDER, ESQ.
 Law Office of Benjamin R. Binder
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 Tampa, FL 33647
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²⁵ Exhibit 1.

**Itemized Veterans Legal Advocacy Group Staff Hours
For 21-3239**

Date	By	Description of Work	Time Spent	Time Eliminated	Time Billed
6-May-2021	BB	Review BVA decision, medical records, and claims file.	1.00		1.00
6-May-2021	BB	Contact Client to discuss CAVC.	0.25		0.25
6-May-2021	BB	Drafted retainer for Client.	0.25		0.25
6-May-2021	ME	Sent retainer to Client.	0.10	0.10	0.00
11-May-2021	BB	Reviewed retainer docs from client.	0.15	0.15	0.00
11-May-2021	BB	Drafted and filed appellate documents.	0.25		0.25
13-May-2021	BB	Reviewed notice of docketing and calendared it.	0.10		0.10
17-May-2021	ME	Correspondence with Client regarding docketing & how to follow case on Court's website.	0.25		0.25
7-Jun-2021	BB	Reviewed BVA decision filing.	0.50	0.50	0.00
24-Jun-2021	BB	Reviewed OGC NOA.	0.10		0.10
12-Jul-2021	BB	Reviewed RBA notice and calendar.	0.10		0.10
13-Jul-2021	BB	Reviewed RBA (1-596).	2.50	0.50	2.00
14-Jul-2021	BB	Reviewed RBA (597-1342).	3.00		3.00
15-Jul-2021	BB	Reviewed RBA (1343-1999).	2.75		2.75
16-Jul-2021	BB	Reviewed RBA (2000-2646).	2.50		2.50

19-Jul-2021	BB	Reviewed RBA (2647-3452).	3.00		3.00
20-Jul-2021	BB	Reviewed RBA (3453-4474).	3.50		3.50
21-Jul-2021	BB	Reviewed RBA (4475-5279).	3.00		3.00
22-Jul-2021	BB	Reviewed RBA (5280-6027).	2.75		2.75
23-Jul-2021	BB	Reviewed RBA (6028-6980).	3.25		3.25
6-Aug-2021	BB	Review Notice to File Brief and calendared.	0.10		0.10
10-Aug-2021	BB	CLS notice reviewed and calendared.	0.10		0.10
17-Aug-2021	BB	Correspondence with OGC regarding Conference.	0.10	0.10	0.00
18-Aug-2021	BB	Reviewed Appellee's motion to reschedule conference & calendared.	0.15		0.15
18-Aug-2021	BB	Reviewed Clerk's order granting Appellee's motion to reschedule conference.	0.10	0.10	0.00
27-Sep-2021	BB	Review RBA for arguments ²⁶ .	1.50		1.50
27-Sep-2021	BB	Outline SOI.	0.75		0.75
28-Sep-2021	BB	Draft SOI 1-2 (to include research: <i>Hudick, Swain</i>).	1.50		1.50
29-Sep-2021	ME	Drafted SOI Pagination Page.	0.10		0.10
29-Sep-2021	BB	Editing SOI.	0.50		0.50
29-Sep-2021	BB	Drafted and filed CAVC Rule 33 Cert.	0.15		0.15
29-Sep-2021	BB	Emailed OGC and CLS Rule 33 SOI.	0.10		0.10

²⁶ Appellant does not consider that task of indexing the Record for completeness to be redundant with a merits review of the content itself.

29-Sep-2021	ME	Correspondence with Client & sent copy of SOI.	0.25		0.25
13-Oct-2021	BB	Preparations for CLS Conference. ²⁷	0.15		0.15
13-Oct-2021	BB	Attended CLS Conference.	0.15		0.15
13-Oct-2021	BB	Discussed the conference with Client. ²⁸	0.25		0.25
13-Oct-2021	BB	Reviewed Clerk's order initiating a second conference & calendared.	0.15		0.15
24-Nov-2021	BB	Review RBA for arguments. ²⁹	2.00		2.00
24-Nov-2021	BB	Outline SOI.	1.00		1.00
26-Nov-2021	BB	Draft SOI 1-2.5 (to include research: Demery, Filmtec Corp., Foman).	2.00		2.00
27-Nov-2021	BB	Draft SOI 2.5-4.5 (to include research Demery).	1.50		1.50
28-Nov-2021	BB	Draft SOI 4.5-6 (to include research).	1.00		1.00
29-Nov-2021	ME	Drafted SOI Pagination Page.	0.15		0.15
29-Nov-2021	BB	Editing SOI.	0.75		0.75
29-Nov-2021	BB	Emailed OGC and CLS Rule 33 SOI.	0.10		0.10

²⁷ This consists of reviewing the record and arguments. This is necessary to do near the conference in order to be able to valuably participate in the discussions.

²⁸ This consists of presenting the Secretary's offer and discussing the pros and cons of proceeding with the case regarding the issues not conceded. This involved an in-depth discussion where the client's need to make an informed decision was at its upmost height.

²⁹ Appellant does not consider that task of indexing the Record for completeness to be redundant with a merits review of the content itself.

29-Nov-2021	ME	Correspondence with Client & sent copy of SOI.	0.25		0.25
8-Dec-2021	BB	Correspondence with OGC & CLS regarding conference.	0.10	0.10	0.00
9-Dec-2021	BB	Preparations for CLS Conference. ³⁰	0.10		0.10
9-Dec-2021	BB	Attended CLS Conference.	0.15		0.15
9-Dec-2021	BB	Discussed the conference with Client. ³¹	0.20		0.20
9-Dec-2021	BB	Correspondence with OGC regarding NOA.	0.10	0.10	0.00
9-Dec-2021	BB	Correspondence with Clients regarding substitution.	0.25		0.25
10-Dec-2021	BB	Reviewed Clerk's order lifting stay & calendared Brief.	0.15		0.15
12-Dec-2021	BB	Correspondence with A. Adams regarding substitution & retainer documents.	0.25	0.25	0.00
13-Dec-2021	BB	Sent retainer documents to A. Adams.	0.25	0.25	0.00
13-Dec-2021	RW	Drafted & filed NOA.	0.15	0.15	0.00
16-Dec-2021	BB	Drafted & filed motion to leave to amend NOA.	0.15		0.15
16-Dec-2021	PA	Review and edit Appellant's Motion to Amend, including review of authorities.	1.50		1.50
16-Dec-2021	BB	Reviewed & filed A. Adam's docs.	0.25		0.25

³⁰ This consists of reviewing the record and arguments. This is necessary to do near the conference in order to be able to valuably participate in the discussions.

³¹ This consists of presenting the Secretary's offer and discussing the pros and cons of proceeding with the case regarding the issues not conceded. This involved an in-depth discussion where the client's need to make an informed decision was at its upmost height.

16-Dec-2021	BB	Drafted & filed Supplemental NOA.	0.25		0.25
6-Jan-2022	BB	Correspondence with Client regarding case.	0.10	0.10	0.00
7-Jan-2022	BB	Correspondence with OGC regarding Brief & Extension.	0.10	0.10	0.00
10-Jan-2022	BB	Continued correspondence with OGC regarding Brief & Extension.	0.25	0.25	0.00
10-Jan-2022	BB	Drafted & filed motion to extend time to file Brief.	0.25	0.25	0.00
10-Jan-2022	BB	Reviewed Clerk's order granting motion to extend time to file Brief.	0.10	0.10	0.00
12-Jan-2022	BB	Continued correspondence with OGC regarding Brief & Extension.	0.10	0.10	0.00
1-Feb-2022	BB	Reviewed Judge's order granting substitution.	0.15		0.15
8-Feb-2022	BB	Drafted & filed motion to extend time to file Brief.	0.25	0.25	0.00
9-Feb-2022	BB	Reviewed Clerk's order granting motion to extend time to file Brief.	0.10	0.10	0.00
20-Feb-2022	BB	Reviewed record in preparation of outlining & drafting Appellant's Brief.	2.50		2.50
20-Feb-2022	BB	Outlined Appellant's Brief.	1.50		1.50
21-Feb-2022	BB	Appellant's Brief (Page 1-3 to include research).	2.50		2.50
22-Feb-2022	BB	Appellant's Brief (Page 4-7 to include research: Carter, Demery, Miller, Romero, Smith).	4.00		4.00
23-Feb-2022	BB	Appellant's Brief (Page 8-10 to include research: Demery, Lauigan, Smith, Swain).	3.00		3.00

24-Feb-2022	ME	Appellant's Brief: Table of Contents & Table of Authorities.	1.00		1.00
24-Feb-2022	BB	Edited & Filed Appellant's Brief.	2.00		2.00
24-Feb-2022	BB	Correspondence with Client regarding Appellant's Brief.	0.25		0.25
5-Apr-2022	BB	Correspondence with OGC regarding Appellee's Brief.	0.10	0.10	0.00
18-Apr-2022	BB	Reviewed Appellee's motion to extend time to file brief & calendared.	0.15		0.15
19-Apr-2022	BB	Reviewed Clerk's order granting Appellee's motion to extend time to file Brief.	0.10	0.10	0.00
9-Jun-2022	BB	Reviewed Appellee's Brief.	2.00		2.00
9-Jun-2022	BB	Correspondence with Client regarding Appellee's Brief.	0.15		0.15
22-Jun-2022	BB	Correspondence with OGC regarding Reply Brief.	0.10	0.10	0.00
22-Jun-2022	BB	Drafted & filed motion to extend time to file Reply Brief.	0.25	0.25	0.00
22-Jun-2022	BB	Reviewed Clerk's order granting motion to extend time to file Reply Brief.	0.10	0.10	0.00
21-Jul-2022	BB	Outlined Appellant's Reply Brief.	1.25		1.25
21-Jul-2022	BB	Appellant's Reply Brief (Pages 1-4).	3.25		3.25
22-Jul-2022	BB	Appellant's Reply Brief (Pages 5-8).	3.00		3.00
25-Jul-2022	ME	Appellant's Reply Brief: Table of Contents & Table of Authorities.	0.75		0.75
25-Jul-2022	PA	Reviewed & edited Reply Brief (review appellee's brief, Board decision, and review cases/authorities/citations and	4.00		4.00

		edit Point 1 (2.6); review relevant cases/authorities/citations and edit Point 2 and conclusion (1.4)).			
25-Jul-2022	BB	Edited & filed Appellant's Reply Brief.	1.00		1.00
25-Jul-2022	BB	Correspondence with Client regarding Appellant's Reply Brief & process going forward.	0.25		0.25
25-Jul-2022	BB	Correspondence with OGC regarding Oral Argument.	0.25	0.25	0.00
27-Jul-2022	BB	Continued correspondence with OGC regarding Oral Argument.	0.10	0.10	0.00
29-Jul-2022	BB	Continued correspondence with OGC regarding Oral Argument.	0.10	0.10	0.00
2-Aug-2022	BB	Continued correspondence with OGC regarding Oral Argument & ROP.	0.10	0.10	0.00
8-Aug-2022	BB	Continued correspondence with OGC regarding Oral Argument & ROP.	0.10	0.10	0.00
8-Aug-2022	BB	Reviewed Record of Proceedings.	2.00		2.00
8-Aug-2022	BB	Drafted & filed motion to oral argument.	1.25		1.25
8-Aug-2022	BB	Drafted & filed motion for review by panel.	1.50		1.50
8-Aug-2022	PA	Reviewed & edited Appellant's Motion for Initial Review by Panel: review Court Rule 27.1 and review and edit summary of appellant's and appellee's arguments from briefs (0.9); review relevant cases/authorities/citations and edit argument for initial panel review 2 (0.8).	1.70		1.70

24-Aug-2022	BB	Reviewed assigned Judges to case.	0.10	0.10	0.00
24-Jan-2023	BB	Reviewed Clerk's order regarding Oral Argument & calendared.	0.15		0.15
23-Feb-2023	BB	Correspondence with OGC & CLS regarding oral argument arrangements.	0.10		0.10
28-Feb-2023	BB	Prepare for Oral Argument.	2.50		2.50
1-Mar-2023	FE	Draft appearance for HH.	0.10	0.10	0.00
1-Mar-2023	HH	Enter appearance.	0.10		0.10
8-Mar-2023	HH	OA - research stats and regs for DEA.	1.25		1.25
8-Mar-2023	HH	OA - review briefing and generate issues and questions to moot..	2.25		2.25
8-Mar-2023	HH	OA - discuss case with BB.	2.00		2.00
9-Mar-2023	CM	OA - review briefing and generate issues and questions to moot.	2.75		2.75
9-Mar-2023	CZN	OA - review briefing and generate issues and questions to moot.	1.00		1.00
10-Mar-2023	BB	Correspondence with OGC regarding mutual agreement.	0.10		0.10
10-Mar-2023	BB	Correspondence with OGC regarding mutual agreement.	0.15		0.15
13-Mar-2023	BB	Correspondence with OGC & CLS regarding mutual agreement.	0.10		0.10
13-Mar-2023	BB	Received stipulation draft, Reviewed stipulation, signed and emailed back.	1.00		1.00

13-Mar-2023	BB	Correspondence with client to discuss the agency process going forward. ³²	0.25		0.25
14-Mar-2023	BB	Correspondence with OGC regarding stipulation.	0.15	0.15	0.00
15-Mar-2023	BB	Reviewed Clerk's order canceling oral argument.	0.10	0.10	0.00
17-Mar-2023	HH	EAJA - add hours to Exhibit 1 for VetLAG employees.	0.25		0.25
30-Mar-2023	BB	Reviewed Judge's order, Judgement & Mandate and calendared EAJA.	0.15		0.15
26-Apr-2023	BB	Drafted Billable Hours.	3.00	3.00	0.00
29-Apr-2023	BB	Edited EAJA application.	1.00		1.00
1-May-2023	PL	Merge EAJA Applications for both firms, finalize application, compile expenses and exhibits.	2.75		2.75
1-May-2023	PL	EAJA - calculate all rates across all indices. Add final numbers to application.	0.50		0.50
1-May-2023	HH	Final read through of EAJA, convert, file.	0.50		0.50

³² Please note that the post conference conversation is a presentation of the offer made at the conference and questions related to the offer. The agency process forward conversation is in order to inform the client of the process that starts when/if the Court grants the joint motion.

Total Hours

BY	RATE	RATE	TIME SPENT	TIME BILLED	TOTAL
Benjamin Binder	Attorney, Tampa, Florida	\$251.54	88.35	80.40	\$20,223.82
Peter Ausily	Attorney, Suffolk, NY	\$226.09	7.20	7.20	\$1,627.85
Harold Hoffman	Attorney, Madrid, Spain	\$214.55	6.35	6.35	\$1,362.39
Clare Malinowski	Attorney, Okinawa, Japan	\$134.32	2.75	2.75	\$369.38
Christina Zahara Noh	Attorney, Stuttgart, Germ.	\$184.96	1.00	1.00	\$184.96
Raelyn Watson	Attorney, Knoxville, TN	\$225.30	0.15	0.00	\$0.00
ME	Paralegal, Tampa, Florida	\$208.00	2.85	2.75	\$572.00
Parker Low	Paralegal, Washington, DC	\$208.00	3.25	3.25	\$676.00
Farron Eckhoff	Paralegal, Washington, DC	\$208.00	0.10	0.00	\$0.00
Total					\$25,016.40

Expense	TOTAL
Oral Argument Hotel ³³	\$702.73
Oral Argument Plane Tickets ³⁴	\$731.60
Total	\$1,434.33

I certify that I have (1) reviewed the combined billing statement and am satisfied that it accurately reflects the work performed by all representatives; and (2) considered and eliminated all excessive or redundant time. This is an itemized statement broken down into detailed case tasks that are intertwined to the preparation of the entire case.

³³ Exhibit 5

³⁴ Exhibit 6

May 1, 2023.

Submitted,

/s/ Benjamin R. Binder

BENJAMIN R. BINDER, ESQ.

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